

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2019-077-00374C

Parcel No. 181/00528-610-263

DENNY ELWELL FAMILY LC C/O OUTBACK STEAKHOUSE OF FL LLC,

Appellant,

vs.

POLK COUNTY BOARD OF REVIEW,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on August 11, 2020. Attorney Bruce Stavitsky represented Denny Elwell Family LC (landlord) and Outback Steakhouse of Florida, LLC (tenant), collectively known hereafter as the Appellant. Assistant Polk County Attorney Dominic Anania represented the Board of Review.

The Denny Elwell Family LC owns a commercial property located at 2410 SE Tones Drive, Ankeny. Its January 1, 2019, assessment was set at \$1,330,000, allocated as \$486,000 in land value and \$844,000 in improvement value. (Ex. B).

The Appellant petitioned the Board of Review contending the property was assessed for more than the value authorized by law. Iowa Code § 441.37(1)(a)(2) (2019). (Ex. C). The Board of Review denied the petition.

The Appellant then appealed to PAAB.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a).

Findings of Fact

The subject property is a one-story restaurant/tavern built in 2004, operated as an Outback Steakhouse. It has 6064 square feet of gross building area and a canopy entrance. The 1.566-acre site is also improved with 36,000 square feet of concrete paving, yard lighting, and a trash enclosure. The property is listed in normal condition with a 3+05 grade (good quality). (Ex. A).

The Appellant submitted multiple listing sheets (MLS) for four sales it believes are comparable to the subject property and show it is over assessed. (Ex. 1). The following table summarizes the sales.

Address	Sale Date	Sale Price	Site Size (Acre)	Year Built	Building Size (SF)	SP/SF
Subject - 2410 SE Tones Dr, Ankeny			1.57	2004	6064	
1 - 1720 22nd St, West Des Moines	Apr-15	\$1,045,000	0.94	1990	5700	\$183.33
2 - 1701 N Ankeny Blvd, Ankeny	Apr-18	\$961,117	0.72	2004	5106	\$188.23
3 - 8481 Birchwood Ct, Johnston	Mar-18	\$1,000,000	1.51	2000	5988	\$167.00
4 - 3900 Merle Hay Rd, Des Moines	Jan-19	\$1,130,000	1.03	1995	5724	\$197.41

All of the comparable properties are single-story, single-tenant restaurants.

The Appellant believes these properties demonstrate it is over assessed on a square foot basis. The subject is assessed for \$219.33 per square foot, whereas the sales range from \$183 to \$197 per square foot. It argues the correct value of the subject property should be \$1,152,160, or \$190 per square foot.

The MLS reports provide limited information beyond the general physical characteristics of each property. We note the subject property is the largest and newest of the properties; it also has the largest site size. Comparables 1 and 4 are older than the subject property (14 years and 9 years, respectively). Comparable 2 was a portfolio sale and the price was reported as “allocated.” (Ex. 1, p. 2). Comparable 4 is reported as a “non-arm’s length” sale. (Ex. 1, p. 4). No other information about these transactions is known, such as whether a tenant was in place at the time of sale, for PAAB to determine whether they are reliable for analysis.

The subject property has a 20-year, graduated lease that began in 2004. It is scaled upward year-after-year; the current rental rate is \$46,585 annually. The Appellant asserts capitalizing the current lease results in an indicated value for the property of less than \$900,000, but it did not indicate what capitalization rate it relied on to arrive at this conclusion.

Mike Caulfield, a commercial appraiser with the Polk County Assessor’s Office, testified for the Board of Review. Caulfield was responsible for valuing the subject property for the 2019 assessment. He explained that 2019 was a re-assessment year. After completing a sales ratio analysis it was determined that properties like the subject required an upward 6.8% adjustment to their assessed value. However, because the subject’s 2018 assessment had increased, Caulfield explained only a half of the trend, or a 3.4% increase, was made to arrive at the 2019 assessment.

Additionally, Caulfield testified the cost and sales comparison approaches were considered in setting the assessment. The cost approach resulted in a conclusion of \$1,331,300. (Ex. A, pp. 5-6).

Caulfield testified he reviewed five sales and adjusted them to complete a sales comparison approach. He testified the resulting adjusted price per square foot was between \$193 to \$343. The sales and the analysis were not submitted as evidence.

Caulfield stated he relied on the Appellants' Comparables 2 and 3 in his analysis, which had adjusted prices of \$266 per square foot and \$193 per square foot, respectively. He testified the other three properties he considered in his analysis were 2017 and 2018 restaurant sales located in Ankeny.

Caulfield testified he was not provided any income information by the Appellant. The Board of Review clarified that the Appellant had submitted some income information as part of a settlement discussion, but it was not presented to Caulfield.

Analysis & Conclusions of Law

The Appellant contends its property is assessed for more than the value authorized by law. Iowa Code section 441.37(1)(a)(2). In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). In protest or appeal proceedings when the complainant offers competent evidence that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation. Iowa Code § 441.21(3)(b)(2) (2019). To be competent evidence, it must "comply with the statutory scheme for property valuation for tax assessment purposes." *Soifer*, 759 N.W.2d at 782 (citations omitted).

Under the statutory scheme, sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). Sale prices of property in abnormal transactions not reflecting market value shall not be taken into account or shall be adjusted to account for market

distortion. *Id.* Other factors and approaches to value, such as cost and income, can only be considered upon a showing that sales cannot readily establish the subject's actual value. § 441.21(2).

The first step in this process is determining if comparable sales exist. *Soifer*, 759 N.W.2d at 783. "Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court." *Id.* at 782 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 88 (Iowa 1977)). Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id.* (other citations omitted). "Factors that bear on the competency of evidence of other sales include, with respect to the property, its '[s]ize, use, location and character,'" and, with respect to the sale, its nature and timing. *Id.* (other citations omitted). Sale prices must be adjusted "to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments". *Id.* (other citations omitted).

The Appellant submitted four sales in support of its claim, but one was identified as a non-arm's length transaction and cannot be relied upon unless adjusted for this factor. § 441.21(1)(b). There is very little information about the remaining sales to make a finding as to whether they were normal for the purposes of section 441.21(1). Assuming they were normal, none were adjusted for any differences that exist between them and the subject property to arrive at an opinion of market value as of January 1, 2019. *Soifer*, 759 N.W.2d at 783 ("When sales of other properties are admitted, the market value of the assessed property must be adjusted to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments."). The subject property is both the newest and the largest of the comparables; it also has the largest site size. We find these differences require adjustment in order to provide a reliable indication of the subject property's value.

Based on this evidence, we find the Appellant failed to shift the burden of proof under section 441.21(3) and this unadjusted sales evidence does not persuade us the subject's assessment is excessive.

The Appellant also attempted to show the subject property's value based on its actual income; however, it did not provide an actual analysis or show that its actual rent is equivalent to comparable market rents. *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419, 423 (Iowa 1997) ("The assessor properly used 13 the objective rental income value of the Younkers store, rather than the actual lease amount, to establish a valuation..."). For this reason and because we find the Appellant has not demonstrated the subject's value cannot be readily established by sales, we give this income analysis no consideration.

The Board of Review offered testimony explaining how the 2019 assessment was determined. It indicated the prior assessment had been trended upward, and the assigned value was further supported by the cost approach, as well as a sales comparison analysis of five properties that were adjusted for differences.

Viewing the record as a whole, we find the Appellant failed to support its claim.

Order

PAAB HEREBY AFFIRMS the Polk County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2019).

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.



Karen Oberman, Board Member



Elizabeth Goodman, Board Member



Dennis Loll, Board Member

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